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No.

Supreme Court, U.S.
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IN THE

United States Supreme Court

FLORENCE Y. BARNES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

NO. 84-2605

APPENDIX

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APPENDIX

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In the

United States Court of Appeals

For the Seventh Circuit

No. 85-1881

FLORENCE Y. BARNES,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois, Danville Division.
No. 84 C 2060—**Harold A. Baker**, *Chief Judge.*

ARGUED JANUARY 21, 1986—DECIDED SEPTEMBER 22, 1986

Before CUMMINGS, *Chief Judge*, BAUER and CUDAHY, *Circuit Judges.*

CUMMINGS, *Chief Judge.* The issue in this case is whether certain benefits received by the plaintiff were paid pursuant to a life insurance contract and are thus excluded from income under 26 U.S.C. § 101(a)(1). Because we determine that there was no life insurance contract, we reverse the district court's judgment for plaintiff.

Plaintiff, Florence Barnes, is the widow of an employee of the University of Illinois (Urbana-Champaign campus) who died on August 23, 1970. At the date of his death, plaintiff's husband was subject to the provisions of the State Universities Retirement System, set forth in Ill.

Rev. Stat. ch. 108½, art. 15 (1979). The Retirement System provides both retirement and disability benefits to employees and their families. The Survivors Insurance Benefit was added to the Retirement System in 1959. 1959 Ill. Laws 1009 (codified at Ill. Rev. Stat. ch. 108½, § 15-145 to 148). Both the retirement and insurance plans are financed by a combination of employee and employer contributions.

After her husband died, plaintiff began receiving $3,000 per year (in monthly installments of $250) in survivors insurance benefits. Plaintiff excluded this amount from her taxable income pursuant to 26 U.S.C. § 101(a)(1) and (d). Upon audit the Internal Revenue Service (IRS) assessed deficiencies for the years 1978 and 1979, asserting that the payments constituted a "pension/annuity" taxable under 26 U.S.C. § 61. The plaintiff was assessed for tax deficiencies in those years for $716 and $743, respectively. She paid the deficiencies, filed claims for refund, and upon disallowance of her claims brought this suit for refund.

The district court granted Barnes' motion for summary judgment. Defendant appeals. We must decide whether the plaintiff's insurance program constitutes a life insurance contract for purposes of 26 U.S.C. § 101(a)(1), which allows an unlimited exemption from gross income for life insurance proceeds, if paid by reason of the insured's death.[1]

DISCUSSION

The traditional definition of a life insurance contract is an agreement to pay a certain sum of money upon the death of the insured in consideration of the payment of premiums. *Central Bank of Washington v. Hume,* 128

[1] 26 U.S.C. § 101(a)(1) provides:

> Except as otherwise provided . . . gross income does not include amounts received (whether in single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

U.S. 195, 205. Fundamental characteristics of life insurance are risk shifting and risk distribution. *Helvering v. Le Gierse,* 312 U.S. 531, 539; *Ross v. Odom,* 401 F.2d 464 (5th Cir. 1968). Risk shifting is transferring the risk of loss caused by premature death from the insured and his or her beneficiaries to the insurer. Risk distribution is spreading the risk of this economic loss among the participants in the insurance program. Thus a life insurance contract pays out of a common fund upon an individual's death regardless of whether the amount is more or less than the decedent paid into the fund. *Ross v. Odom,* 401 F.2d 464, 467 (5th Cir. 1968). Although there are variations on this theme, the common life insurance contract pays the insured's estate or beneficiaries a definite sum of money upon the death of the insured from a particular peril or from any peril. See Couch on Insurance § 1.73 (Rev. 2d ed.).

Simply put, the insured and insurer are each betting on the longevity of the insured. The risk to the insurer is that death will come before the value for premiums paid exceeds the death benefit. The insured risks that the value of his or her payments will surpass the promised payment before death. If the contract operates to insure a risk-free system for either party, it is not a life insurance contract. *Helvering v. Le Gierse,* 312 U.S. 531; *Edgar v. Commissioner,* 39 T.C.M. (CCH) 816, 822 (1979).

Our analysis of the survivors insurance benefit program provided by the state discloses three important factors. The first critical factor is the refundability of contributions. According to the survivors insurance plan, contributions made by the insured will never be forfeited. If the employee is terminated or retires, his or her contributions are refundable. The same is true if the employee dies leaving no statutorily qualified beneficiaries. Similarly, in some circumstances under the retirement and death benefit programs contributions are returned to the insured or beneficiary. For the employee-insured the premium payments into the fund are not irrevocably committed. Under this arrangement, the insured takes no risk of death since

the insured is entitled to the return of at least the amount of contributions (plus interest) in any event. See *Edgar v. Commissioner*, 39 T.C.M. (CCH) 816, 822 (1979).

The second factor is the interrelationship between the retirement, disability, death benefit, and the survivors insurance programs. The amount of benefits under both the retirement plan and the death benefit programs depend in part on whether survivors insurance benefits are also payable. See, e.g., §§ 15-141, 15-142. Additionally, although payments are made separately, contributions to the programs are pooled for investment purposes. This interdependence among the types of programs supports the notion that it is in reality one integrated program of which the survivors insurance benefits provide a survivorship element for the retirement program. See *Lilly v. Commissioner*, 45 T.C. 168, 173 (1965).

The third factor to be considered is the number and type of restrictions placed on the right to receive benefits under the survivors insurance program. Benefits are payable only to a restricted class of beneficiaries: a dependent spouse, dependent children, or dependent parents. For example, a surviving spouse must be either over 55 or still caring for dependent children. Benefit payments stop if the surviving spouse remarries, if the children lose their dependency status, and may also stop if any of them dies. Furthermore, if the beneficiary is already receiving survivors insurance benefits when a second covered employee dies, he or she is entitled only to the larger of the two benefits. And, as noted earlier, if the employee dies leaving no qualified beneficiaries, his or her estate receives only the amount of past contributions and no death benefits. Whatever the characterization of this plan, it does not provide for benefit payments immediately upon the death of the insured. Cf. *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968). Rather, it is obviously designed to assist certain surviving dependents only while they remain dependents. See *Edgar*, 39 T.C.M. (CCH) at 822; *Lilly*, 45 T.C. at 173; *Davis v. United States*, 323 F. Supp. 858 (S.D. W.Va. 1971). Because the duty to pay arises and continues only

under certain conditions, both precedent and subsequent,[2] this plan is not one of life insurance.

Plaintiff argues that although the employee carries little risk, the employer also contributes to the insurance fund and bears the substantial risk. Because the employer's contributions are irrevocably committed, the argument goes, there is adequate risk shifting in this insurance plan. There are two weaknesses in this position. First, the employer is required to fund the plan for all employees. Thus when one employee withdraws from the plan (either due to death with no qualified beneficiaries, retirement, or termination) the funds contributed on his or her behalf may then switch to fund another employee. Those contributions are not lost; they are simply redirected. This factor runs afoul of the risk transfer requirement of insurance. Second, if all the plan participants are entitled to at least the return of their contributions, then they carry none of the risk. Hence the risk is not distributed among them. Instead, it is only the employer who carries the risk. This is not adequate risk distribution for insurance.

Looking through the form of the "Survivors Insurance Benefit Plan" we see little substance. The payment of benefits is conditioned on too many "ifs" for real risk shifting and risk distribution to take place. And when benefits are not payable, the insured or his or her estate still recovers the insured's contributions plus 4½% interest, just as if the insured had put the premiums into savings.[3]

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[2] Plaintiff argues that the life insurance benefit payments may be conditioned on the survival of certain beneficiaries, citing *Estate of Connelly v. United States*, 551 F.2d 545 (3d Cir. 1977). This case is distinguishable because the payments here can cease due to conditions subsequent to the death of the insured. Additionally, in *Connelly* no premium refunds were made.

[3] Plaintiff also argued that participants in the insurance program were at risk for the opportunity cost of their premium payments. In other words, although they would receive their contributions back, they would only receive 4½% interest whereas they could

(Footnote continued on following page)

There is no risk to the insured. This plan more closely resembles a survivor's pension plan that provides special benefits for those dependent members of an employee's family who may be particularly affected by the employee's death.

Because the contributions are refundable, the obligation to make payments to beneficiaries is limited by the beneficiaries' status (both before and after the insured's death), and the plan is interdependent with the rest of the pension plans, the Survivors Insurance Benefit program is not insurance for purposes of 26 U.S.C. § 101(a)(1). Rather the program is typical of retirement annuities. Therefore, there is no need to discuss the Commissioner's fall-back argument that the tax treatment is governed by 26 U.S.C. § 101(b)(1).[4] The judgment of the district court is therefore reversed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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[3] *continued*
have obtained a much greater interest rate through other investments. However, all we are concerned with is whether the insured would have been in the same position simply saving the money. See *Commissioner v. Treganowan*, 183 F.2d 288, 291 (2d Cir. 1950), certiorari denied sub nom. *Strauss's Estate v. Commissioner*, 340 U.S. 853. Hence the 4½% interest rate adequately reflects one possible type of savings—a passbook savings account.

[4] 26 U.S.C. § 101(b) provides in pertinent part:

> (1) General rule.—Gross income does not include amounts received . . . by the beneficiaries c the estate of an employee, if such amounts are paid . . . by reason of the death of the employee.
>
> (2) Special Rules for paragraph (1).—
>
> (A) $5,000 limitation.—The aggregate amounts excludable under paragraph (1) . . . shall not exceed $5,000.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

FLORENCE Y. BARNES, Plaintiff,	FILED Mar 27 1985
vs.	John M. Waters, Clerk U.S. District Court, Central District of Illinois
UNITED STATES OF AMERICA, Defendant	NO. 84-2060

SUMMARY JUDGMENT FOR PLAINTIFF

The plaintiff, Florence Y. Barnes, seeks a refund of taxes and interest paid in connection with her 1978 and 1979 federal income tax returns. The plaintiff claims that payments made to her as survivor's insurance benefits under the State University's Retirement System are "amounts received under a life

insurance contract...paid by reason of the death of the insured" which are exempt from gross income under the provisions of Internal Revenue Code §§ 101(a)(1) and 101(d). Jurisdiction is vested in the court under the provisions of 28 U.S.C.§1346 (a) (1).

The plaintiff is the widow of a former employee of the University of Illinois who during his lifetime was a contributor to the State University's Retirement System (SURS). *See* Exhibit D attached to the First Amended Complaint.

During the tax years 1978 and 1979, the plaintiff received payments

from SURS as "survivor insurance benefits". She excluded these from taxable income under the provisions of Internal Revenue Code §101(a) (1954). The defendant assessed deficiencies against the plaintiff for the years 1978 and 1979 together with interest. The deficiency assessments and the interests, in the total amount of $1706.94, were paid by the plaintiff and a timely cliam for refund was made with the Internal Revenue Service Center at Kansas City, Missouri. The claim for refund was disallowed and this suit followed. The issue presented is a narrow one: whether the payments received by the

plaintiff as "survivor insurance benefits" during the years in question constitute life insurance proceeds which are excludable from income un der §101(a) of the Internal Revenue Code of 1954.

Both the plaintiff and the defendant have moved for summary judgment under the provisions of Fed. R. Civ. P. 56.

SURS has two aspects: first, it provides a retirement annuity to an employee; and second, it provides survivor's insurance benefits for the family of the employee after his de th. As a condition of employment each employee of the University of

Illinois contributes eight percent of his salary to SURS, seven percent goes to fund employees' retirement annuity, Exhibit D, Section 15-157(1) and (6), and one percent goes to fund the survivors' insurance benefit, Exhibit D, Section 15-158. After her husband's death, the plaintiff was paid the sum of $3,000 per year in monthly installments of $250. It was those sums that the plaintiff excluded from gross income and which are the subject of the deficiency assessments and claim for refunds which are the center of this suit.

The parties are in agreement that in order for the amounts in

controversy to be considered as received under an insurance contract it is necessary that the survivor insurance benefits constitute "a binding arrangement of risk-shifting and risk distribution". Ross v. Odom, 401 F.2d 464,467 (5th Cir., 1968). It is the plaintiff's contention that the risk-shifting and risk distribution are present while the defendant asserts that the survivor insurance benefits under SURS do not involve risk-shifting because (1) the university plan involves no risk since the amounts are entirely refundable; (2) the provisions of the plan do not alleviate the

potential financial burden of premature death; and (3) the survivors' benefits are not payable in all events.

The Court is persuaded that the survivor insurance benefits payable under SURS provide for risk shifting and risk distribution as described in Ross v. Odom, 401 F.2d 464 (5th Cir. 1968) and Commissioner v. Treganowan, 183 F.2d 288 (2nd Cir. 1950), cert. denied 340 U.S. 853 (1950). In Ross the goverment raised the same issues that are raised here. The retirement system in question was the state employee's retirement system of Georgia. That

system had both a retirement pension for the employee and a survivor's benefit for members of the employee's family in case of his premature death. The government contended that the payments under the survivor's benefit aspect of the Georgia program were taxable income but the Fifth Circuit Court of Appeals held that because of the presence of risk shifting characteristics the payments were excludable from income as life insurance proceeds. The Georgia system is parallel to the Illinois system. It provides for employee and state contributions and risk-shifting occurs since the state bears

a substantial cost of the plan which is not refundable. The facts of Treganowan indicate there is no merit in the government's position that the empoloyee must bear the risk of losing his contributions. In Treganowan the decedent had paid only $2,160 in contributions fronm 1925 to 1941 because of credits from earnings in the fund and from 1941 through 1945 the decedent and his estate had made no contributions at all because of a surplus in the gratuity fund.

The government's argument that survivor's benefits are not payable in all events and therefore do not

involve risk shifting is also without merit in light of Commissioner v. Noel's Estate, 380 U.S. 678 (1965) where flight insurance was held to have the attributes of risk shifting even though the proceeds were not payable in all events.

The government's point that the provisions of the plan do not alleviate the potential financial burden of premature death escapes the court. Certainly any insurance payments upon the death of the contributor alleviate the financial burdens bound to be experienced by his survivors after his death. To argue otherwise seems nonsense.

Finally, the government argues that SURS is not actuarily sound. Yet as argued by the plaintiff, and as pointed out in Ross v. Odom, 401 F.2d at 468, the determining factor is not whether SURS is hypothetically sound but is in fact financially sound. The annual report of SURS for the year 1979 shows that the survivor's insurance benefit was indeed financially sound.

IT IS THEREFORE ORDERED that the Clerk enter summary judgment in favor of the plaintiff and against the defendant in the sum of $1,706.94 and costs of suit.

IT IS FURTHER ORDERED that the cross-motion for summary judgment of the defendant be, and hereby is, denied.

Ill. Constitution, Art. 13, Sec. 5 (1970)

§5. Pension and Retirement Rights.

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished.

26 U.S.C., Sec.101 (a),(d)

§ 101. Certain Death Benefits.

(a) Proceeds of life insurance contracts payable by reason of death. -

(1) General rule. - Except as otherwise provided in paragraph (2), subsection (d), and subsection (f), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(d) Payment of life insurance proceeds at a date later than death. -

(1) General rule. - The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received -

(A) any amount determined by such proration, and

(B) in the case of the surviving spouse of the insured, that

portion of the excess of amounts received under one or more agreements specified in paragraph (2) (A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagrah (A) of this paragraph which is not greater than $1,000 with respect to any insured. Gross incomes includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer.- An amount held by an insurer with respect to any beneficiary shall

mean an amount to which subsection (a) applies which is -

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) is equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.

(3) Surviving spouse. - For purposes of this subsection, the term "surviving spouse" means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.

(4) Application of subsection.- This subsection shall not apply to any amount to which subsection (c) is applicable.

28 USC, Section 1291

Final decisions of district courts

The courts of appeals shall have jurisdiction of the United States, the United Stats District Court for the District of the Canal Zone, the District Court of Guam, and the District Could of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c.646, 62 Stat. 929; Oct. 31, 1951, C.655, §48, 65 Stat.726; July 7, 1958, Pub. L.85-508, §12(e), 72 Stat. 348.

28 USC, Sec. 1346 (A)(1)

United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority of any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

Ill.Rev.Stat., C.144, Sec.92(a)
and Amendatory Date (1959)

92a. § 5.5-1 Survivors Insurance Benefits: Upon the effective date of this amendatory Act of 1959, the following Survivors Insurance Benefits shall be payable, (1) upon death of a Participating Employee after completion of 1½ years of Service, (2) upon death of a Participant who terminates his status as an Employee after having completed at least 10 years of Service, and (3) upon death of an Annuitant who is receiving a retirement annuity:

(a) A widow shall be entitled to a survivors annuity of 30% of

Final Rate of Earnings. This annuity shall begin on the day following the date of death of the Participant or Annuitant or the date the Widow attains age 55, whichever is later, and shall continue until she remarries or dies.

As amended by act approved July 14, 1959. L.1959, p.____, S.B.No.151.

Ill. Rev. Stat., C.108½ (1969)

15-125. Prescribed rate of interest-Effective rate of interest.] §15-125. "Prescribed rate Rate of Interest.] §15-125. "Prescribed rate

(1) "Prescribed rate of interest": The rate of interest to be used in actuarial valuations and in development of actuarial tables as determined by the board on the basis of the probably average effective rate of interest on a long term basis.

(2) "Effective rate of interest": The interest rate for any

fiscal year determined by the board from the investment experience of the preceding fiscal year. In determioning the effective rate of interest to be credited to member contribution accounts and other reserves, the board may provide for reserves for anticipated losses upon sales, redemptions or other disposition of investments and for reserves for variations in interest experience.

The prescribed rate of interest and the effective rate of interest shall not exceed 4½%.

Amended by P.A.76-802, §1, eff. Aug. 15, 1969.

15-135. § 15-135. Retirement annuities - conditions. A participant whose employment by all employers is terminated, regardless of cause, on or after the completion of 10 years of service after September 1, 1941, or after attainment of age 55 and completion of 8 years of service after September 1, 1941, or upon the attainment of the age of compulsory retirement, is entitled to a retirement annuity if he has attained at least age 55.

A participant who completes 5 or more years of service after September 1, 1941, but does not meet the age and service conditions

set forth in the preceding paragraph, is entitled to a retirement annuity upon termination of employment by all employers or upon attainment of age 62, whichever is later.

The annuity shall begin on the date specified by the participant in a written application therefor, which date shall not be prior to termination of employment or more than 30 days before the receipt of the application by the board.

An annuity is not payable if the amount provided under Section 15-136 is less than $10 per month.

A participating employee shall be retired no later than the first

day of September immediately following his 68th birthday; however, upon written request of the employee and certification of the employer, in exceptional cases and for substantial cause, retirement shall be deferred for a period not to exceed 1 year at any one time. As amended by act approved June 29, 1967. L.1967, P.1005.

15-138. § 15-138. Retirement annuities - reduction. If a participant elects to have a reversionary annuity paid under this Article, the retirement annuity otherwise payable shall be reduced by the actuarial

equivalent of the amount required to provide the reversionary annuity.

15-139. § 15-139. Retirement annuities - suspended during employment. If an annuitant receives or becomes entitled to receive during any month compensation in excess of the monthly retirement annuity for services performed after the date of retirement for any employer under this system, the State Employees' Retirement System of Illinois, or the Teachers' Retirement System of the State of Illinois, that portion of the monthly retirement annuity provided by employer contributions shall not be payable.

If an employer certifies that an annuitant has been reemployed by the employer on a permanent and continuous basis or in a position in which the annuitant is expected to serve for a period of at least 9 months, the annuitant shall resume his status as a participating employee and shall be entitled to all rights under the system which are applicable to participating employees if he files with the Board an election to forego the receipt of all annuity paym ents during the period of reemployment. Upon subsequent retirement, his retirement annuity shall consist of the annuity which

was terminated by the reemployment, plus the amount of the additional retirement annuity based upon service granted after the date of the initial retirement, but the combined retirement annuity shall not exceed the maximum annuity applicable on the date of his latest retirement.

The total service and earnings credited before and after the initial date of retirement shall be considered in determining eligibility of the employee or his beneficiary to benefits under this Article,and in calculating final rate of earnings.

For the purpose of determining the death benefit which is payable

to the beneficiary of an annuitant who resumes his status as a participating employee under this sectdion, accumulated normal and additional contributions shall be considered as the sum of the accumulated normal and additional contributions at the date of initial retirement and the accumulated normal and additional contributions credited after that date, less the sum of the annuity payments received by the annuitant.

The survivors insurance benefits provided by Section 15-145 shall not be applicable upon resumption by the annuitant of his status as a participating employee,

unless he has, at the time of his initial retirement, a survivors insurance beneficiary who could qualify for the benefits under that section.

If the employment of the annuitant is terminated because of circumstances other than death, before the expiration of a period of 9 months after the date of re-employm ent, the foregoing provisions of this section regarding resumption of status as a participating employee shall be inapplicable, and the normal and survivors insurance contributions which are deducted during this period shall

be refunded to him without interest, and subsequent benefits under this Article shall be the same as those which were applicable prior to the date that the annuitant resumed employm ent. As amended by act approved Aug. 18, 1965. L.1965,p.3133.

15-141. § 15-141. Death benefits - death of participant. A beneficiary who under the rules of the board was dependent upon a participating employee immediately

prior to the employee's death, shall, if a survivors insurance benefit is not payable, be entitled to a death benefit of an amount equal to the sum of (a) the employee's accumulated normal and additional contributions on the date of death, (b) the employee's accumulated survivors insurance contributions, and (c) an additional death benefit of an amount equal to the employee's final rate of earnings at the date of death, but not less than $2,000 nor more than $5,000.

If a survivors insurance benefit is payable, the death benefit

to a dependent beneficiary of a participant shall be equal to the sum of the accumulated normal and additional contributions of the participant on the date of his death. If the total of the lump sum and monthly survivors benefits payable under Section 15-145 amounts to less than the sum of the benefits under (b) and (c) of the preceding paragraph, the excess shall be paid to the dependent beneficiary.

The nondependent beneficiary of a participant, upon the death of the participant, shall, if a survivors insurance benefit is not payable, be entitled to (a) a death

benefit of an amount equal to the sum of the participant's accumulated normal, survivors insurance and additional contributions on the date of death, plus (b) an additional death benefit of $1,000 if the deceased was a participating employee at the time of his death.

If any payments are made under any State or Federal Workmen's Compensation or Occupational Diseases Law because of the death of an employee, the additional death benefit payable under this section shall be reduced by the total amount of the paym ents. As amended by act approved June 29, 1967. L.1967, p.1005.

15-145. §15.145. Survivors Insurance benefits - conditions and amounts. If a person becomes a participant in this system or one of the other systems covered by Article 20 of this Code prior to the attainment of age 58, the following survivors insurance benefits shall be payable (1) upon death of a participating employee after completion of 1½ years of service, (2) upon death of a participant who terminates his status as an employee upon completion of 10 years of service, and (3) upon death of an annuitant who is receiving a retirement annuity.

(a) A widow shall receive a survivors annuity of 30% of final rate of earnings. The annuity shall begin on the day following the death of the participant or annuitant or the date the widow attains age 55, whichever is later, and shall continue until she remarries or dies. The annuity shall also be payable to the widow prior to her attainment of age 55 when she has in her care the deceased participant's or annuitant's dependent unmarried child or children under age 18.

(b) A dependent widower shall receive a survivors annuity of 30% of final rate of earnings. The

annuity shall begin on the day on the day following the death of the participant or annuitant or the date the dependent widower attains age 55, whichever is later, and shall continue until he remarries or dies. The annuity shall also be payable to the dependent widower prior to his attainment of age 55 when he has in his care the deceased participant's or annuitant's dependent unmarried child or children under age 18.

(c) Each dependent unmarried child under age 18 of a deceased participant, or of a deceased annuitant who had a survivors

insurance beneficiary at the time of his retirement, shall receive a survivors annuity of the sum of (1) 20% of final rate of earnings, and (2) 10% of final rate of earnings divided by the number of children entitled to this benefit. The annuity shall begin on the day followiong the death of the participant or annuitant and shall continue until the child marries, dies or attains age 18.

(d) Each dependent parent of a deceased participant, or of a deceased annuitant who had a survivors insurance beneficiary at the time of his retirement, shall receive, upon

attainment of age 55, a survivors annuity of the sum of (1) 20% of final rate of earnings, and (2) 10% of final rate of earnings divided by the number of parents who qualify for the benefit. The annuity shall continue until the parent remarries or dies.

(e) In addition to the survivors annuity provided above, each survivors insurance beneficiary shall, upon death of the participant or annuitant, receive $1,000 divided by the number of such beneficiaries.

The survivors' benefits provided by this Section shall not be applicable in the case of any participant

or annuitant whose status as an employee terminated prior to July 14, 1959.

Service under the State Employees' Retirement System of Illinois[1], the Teachers' Retirement System of the State of Illinois[2] and the Public School Teachers' Pension and Retirement Fund of Chicago shall be considered in determining the employee's eligibility for survivors insurance benefits under this section.

If, by operation of law, a function of a government unit, as defined by Section 20-107 of this

[1] Chapter 108½, §14-101 et seq.
[2] Chapter 108½, §16-101 et seq.

Code, is transferred in whole or in part to an employer, and an employee transfers employment from this governmental unit to such employer within 6 months after the transfer of the function, the service credits in the retirement system covering the governmental unit which have been validated under Section 20-109 of this Code, shall be considered in determining eligibility for survivors insurance benefits under this section. Amended by P.A. 76-945, §1, eff. Aug.26,1969.

15-148. §15-148. Survivors insurance benefits-general provisions. The survivors annuity shall be payable monthly, and any annuity due but unpaid upon the death of a person entitled to this benefit, shall be paid to his estate.

If a person becomes entitled to receive more than one survivors insurance benefit because of the death of 2 or more persons, he shall receive only that benefit which is the largest.

A survivors insurance beneficiary or the personal representative of the estate of a deceased or incompetent survivors insurance beneficiary may waive the right to receive survivorship benefits, provided written notice of the waiver is given by him to the board within

6 months after the death of the participant or annuitant and before any payment is made pursuant to an application filed by him. As amended by act approved Aug. 18, 1965. L.1965, p.3133.

15-150. § 15-150. Disability benefits-eligibility. A person who, because of mental or physical disability arising from any cause while he is a participating employee, becomes unable to perform the duties of his assigned position for any period exceeding 60 days, shall be entitled to disability benefits, except that no benefits shall be

payable for any disability which begins prior to the completion of 2 years of service unless the disability is caused by an accident. Inability to perform the duties of any assigned position by reason of pregnancy or childbirth is not a disability within the meaning of this section.

An employee shall be considered disabled only during the period for which the board has received (a) a written certificate by at least 2 licensed and practicing physicians appointed by the board stating that the employee is disabled and unable to reasonably perform the duties of

his assigned position and (b) a written certificate by the employer that the employee is unable to perform the duties of his assigned position. As amended by act approved June 29, 1967. L.1967, p.1005.

15-151. §15-151. Disability benefits - commencement. Disability benefits shall begin to accrue upon the termination of the payment of salary or sick leave benefits by the employer or the the 61st day after the occurrence of the disability, whichever is later, but no benefits shall be payable covering a period of more than 30 days prior to the

receipt of a written application therefor unless the board finds good cause for the delay in filing the application. The recurrence within 30 days of a former disability shall be considered a continuation of the disability. If a disabled participant returns to his assigned position and within 30 days again becomes disabled from the same cause, the previous period of disability shall be considered in determining the date benefits may begin, and the amount of the benefit shall be based upon his basic compensation on the date he first became disabled from this cause.

15-152. § 15-152. Disability benefits - duration. Disability benefits shall be discontinued (a) when disablity ceases, (b) upon refusal of the participant to submit to a reasonable physical examination by a physician approved by the board, (c) upon refusal of the participant to accept any position, assigned in good faith by an employer, the duties of which could reasonable be performed by him and the earnings of which would be at least equal to the disability benefit payable hereunder, (d) upon September 1, following the participant's 68th birthday, or (e) when the total amount of

disability benefits paid equals 50% of the participant's total earnings for the entire period of employment for which service has been granted prior to the date disability benefits begin to accrue, assuming in the caes of a participant with more than 3 fiscal years of service prior to September 1, 1941, that his annual rate of earnings for the period prior to September 1, 1941, was equal to the average annual rate of earnings during the last 3 fiscal years thereof.

Service and earnings credits under the State Employees' Retirement System of Illinois and the

Teachers' Retirement System of the State of Illinois shall be considered in determining the employee's eligibility for disability benefits, and the total period during which disability benefits are payable.

If, by operation of law, a function of a government unit, as defined by Section 20-107 of this Code is transferred in whole or in part to an employer and an employee transfers employment from this governmental unit to such employer within 6 months after the transfer of this function, the pension credits in the retirement system covering the governmental unit which have been

validated under Section 20-109 of this Code, shall be treated the same as pension credits in the States Universities Retirement System in determining whether the employee has met the participation and service requirements for eligibility for disability benefits under Section 15-150 and the total period during which disability benefits are payable. As amended by act approved June 29, 1967. L.1967, p.1005.

15-153. §15-153. Disability benefits - amount. Disability benefit shall be the greater of (a) 50% of the basic compensation which

would have been paid to the participant had he continued in service for the entire period during which disability benefits are payable, not including, however, wage or salary increases subsequent to the date of disability or extra prospective earnings on a summer teaching contract or other extra service not yet entered upon or (b) 50% of the average earnings of the participant during the 24 months immediately preceding the month in which disability occurs. For the purpose of determining the disability benefit, the basic compensation of a participating employee on leave of absence or on lay-off

status shall be assumed to be equal to his basic compensation on the date that the leave of absence or lay-off begins. In no event shall a disablity benefit exceed the applicable maximum annuity permitted under Section 15-136 which was in effect on the date that the disability occurred.

If the disability benefit is 50% of the basis compensation, payments during the fiscal year shall accrue over the period that the basic compensation would have been paid to the participant had he continued in service. If the disability benefit is 50% of the average

earnings of the participant during the 24 months immediately preceding the month in which disability occurs, payments during the fiscal year shall accrue over a period of 12 months. Disability benefits shall be paid as of the end of each calendar month during which payments accrue. Payments for fractional parts of a month shall be determined by prorating the total amount payable for the full month on the basis of days elapsing during the month. Any disability benefit accrued but not paid upon the death of a disabled participant shall be paid to his beneficiary.

If the disabled participant earns compensaton from any source for personal or professional services in excess of the disability benefit, the disability benefit shall be reduced by the excess of the earnings over the benefit.

In determining the monthly disability benefits payable to any participant, a deduction shall be made equivalent to any benefits payable to the employee under any State or Federal Workmen's Compensation or Occupational Diseases Act for any period for which disability benefits are payable, except payment for medical, surgical and hospital

services and artificial members or appliances, fixed statutory payments for the loss of any bodily member, payments for loss of industrial vision or redemption awards payable prior to the date monthly disability benefits first become payable. If the benefits deductible under this paragraph are stated as a specified amount per week for a designated calendar period, then the monthly amounts ahll, for purposes of this secton, be 4 1/3 times such weekly amount.

For any calendar month during which the amount of benefits deductible under the foregoing paragraph

when thus computed on the monthly basis exceeds the amount of the monthly disability benefit otherwise payable for that month, no monthly disablity benefits will be payable. For any calendar month in which the amount of benefits deductible under the foregoing paragraph when computed on a monthly basis is less than the monthly disability benefit paid for that month, such lesser amount shall be deducted from the monthly disability benefit payable for that month. Lump sum awards provided for the payment in advance of workmen's compensation benefits which are definitely allocable to

specific weeks in a calendar period will be deducted on the same basis as if the award had been payable on a weekly basis.

If such workmen's compensation is not allocable to any specific calendar period, including redemption awards payable subsequent to the date monthly disability benefits first become payable, then an equivalent monthly amount of such awards shall be computed, for purposes of this section, as 4 1/3 times the amount of the weekly workmen's compensation benefit provided by the applicable statute for the participant and his dependents. The total

workmen's compensation awards shall be divided by such computed equivalent monthly amount to determine the number of months and fractions of months during which montly disability benefits shall be reduced. As amended by act approved Aug. 5, 1963. L.1963, p.2374.

15-155. § 15-155. Employer contributions. The State of Illinois shall make contributions by biennial appropriations of the amounts which, together with the other contributions of employers out of trust, federal and other funds under their control, the contributions of the participating

employees, income from investments, and other income of this system, will be necessary to meet the costs of maintaining and administering this System:

(1) the total amount of the employer contribution for any fiscal year shall be the sum of the amounts estimated to be required, on the basis of the actuarial tables adopted by the board and the prescribed rate of interest to meet the disability benefits, additional death benefits, the employers' portion of the cost of all annuities and survivors insurance benefits and expenses of administration expected to be paid

during the year and to result in the accumulation of assets at the end of the year equal to the sum of the following:

(a) the liablity for all annuities expected to be paid to the then annuitants, and the survivors insurance benefits expected to be paid;

(b) the liability for all accumulated additional, normal, and survivors insurance contributions of the then participants;

(c) the single premium reserve required for the employers' portion of the cost of all annuities which have then accrued because of

previous earnings of the then participants;

(d) additional reserves which may reasonably be required because of variations in mortality, interest, and turnover experience.

In determining the employer contributions, the board shall include the amount which is required to amortize the cost of acquisition of land and the construction of an office building thereon over a period not exceeding 30 years, including interest at the rate of 6% per annum, less the estimated amount of rentals which may be received from the lease of surplus space in the building.

The contributions of employers, from State appropriations for any fiscal year shall not be less than an amount which is required to fund fully the current service costs in accordance with actuarial reserve requirments as prescribed in paragraph (1) of this Section, plus interest at the prescribed rate on the unfunded accrued liabilities.

If an employee is paid from trust or federal funds, the employer shall pay to the board contributions from these funds which are required to fund fully the current service costs in accordance with the actuarial reserve requirements as prescribed

in paragraph (1) of this Section. Funds of the alumni associations, foundations, and athletic associations which are affiliated with the universities included as employers under this Article and other employers which do not receive State appropriations are considered as trust funds for the purpose of this Article.

(2) the total employer contribution shall be apportioned among the various funds of the State and other employers, whether trust, federal, or other funds, in accordance with actuarial procedures approved by the board.

The contributions of the State of Illinois for employers which receive appropriations from the State for personal services shall be payable from appropriations made to the employers. The contributions for Class I junior colelges shall be payable solely from appropriations to the Illinois Junior College Board for employer contributions. Class I junior colleges making employer contributions prior to the effective date of this amendatory Act of 1967 shall be reimbursed by the Illinois Junior College Board upon the filing of a claim for reimbursement in the manner prescribed by the Board. The

Auditor of Public Accounts shall draw warrants payable to the treasurer of the system upon proper certification by the system, by the Illinois Junior College Board or by the employer in accordance with the laws making such appropriation. Amended by P.A. 76-427, § 1, eff. July 19, 1969.

15-157. §15-157. Employee normal and additional contributions. (1) Each participating employee shall make normal contributions of 3½% to September 1, 1949, 5% to September 1, 1955, 6% to September 1, 1969, and 6½% thereafter, of each

payment of earnings applicable to employment under this system on and after the date of becoming a participant. That fraction of a participant's total accumulated normal contributions, the numerator of which is equal to the number of years of service in excess of that which is required to qualify for the maximum retirement annuity, and the denominator of which is equal to the total service of the member, shall be considered as additional contributions. In computing the additional contributions, service shall include all service after August 31, 1941, and that service before September 1,

1941 for an employer which was covered by a retirement plan prior to that date. The determination of the applicable maximum annuity and the adjustment in contributions required by this provision shall be made as of the date of the participant's retirement.

(6) Each participating employee shall make additional contribuitons of ½ of 1% of earnings after September 1, 1969 to finance a portion of the cost of the annual increase in retirement annuity provided by Section 15-136. These contributions shall not be considered in calculating the amount of the retirement annuity under Section 15-136.

If the board by appropriate rule so permits, and subject to such conditions and limitations as may be determined by rules prescribed by it, a participant may make other additional contributions of such percentages of earnings or amounts as the

employee shall elect in a written notice thereof received by the board.

Amended by P.A. 76-802, § 1, eff. August 15, 1969.

15-158. § 15-158. Employee survivors insurance contributions. Each participating employee shall make survivors insurance contributions of 1% of annual earnings applicable to employment under this system on and after August 1, 1959. Contributions in excess of $80 during any fiscal years beginning before August 31, 1969 and in excess of $120 during any fiscal year

beginning after that date shall be considered as additional contributions. Amended by P.A. 76-802, § 1, eff. Aug. 15, 1969.

15-173. § 15-173. To cause actuarial analyses. To cause a general investigation to be made by a competent actuary, at least once every 5 years, of the retirement, disability, separation, mortality, interest, and employee earning rates; to recommend, as a result of each such investigation, the tables to be adopted for all required actuarial calculations; and to cause an annual determination to be made by a

competent actuary of the liabilities and reserves of the system and an annaul determination of the amount and distribution of the required employer contributions.

AFFIDAVIT

I, Robert L. Barnes, being duly sworn, deposes and says:

(1) That he is a professional actuary currently employed by The Wyatt Company, a firm engaged in an extensive actuarial consulting practice in the United States and Canada;

(2) That his business address is: Suite 5600, Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606;

(3) That he has had extensive formal education in mathematics with an emphasis upon actuarial science, having attended the

University of Western Ontario at London, Ontario, from which he graduated with a B.A. degree (in Honours Mathematics) in May, 1961;

(4) That he has been regularly employed in the actuarial field since May, 1961, first with The Standard Life Assurance Company in Montreal, Canada, from May, 1961 to December, 1966, and then with The Wyatt Company, beginning in January 1967 and continuing to this date;

(5) That he is a Fellow of The Society of Actuaries, a member of the American Academy of Actuaries, a Fellow of The Conference of

Actuaries in Public Practice, and an enrolled actuary under ERISA;

(6) That as an employee of The Wyatt Company his responsibilities include, among others, that of actuary for the Employes' Retirement System of the City of Milwaukee, Standard Oil Corporation (Indiana), State Employees' Retirement System (Illinois), Brunswick Corporation, and Quaker Oats Company.

(7) That The Wyatt Company has been retained by the Board of Trustees of the State Universities Retirement System of Illinois (hereinafter referred to as the "Retirement

System") to provide the actuarial analyses required by Illinois Revised Statutes, Chapter 108½, §15-173;

(8) That he has been assigned by The Wyatt Company to prepare the actuarial analyses of the Retirement System for which The Wyatt Company has been retained;

(9) That he is familiar with the Illinois statutory provisions governing the operation of the Retirement System insofar as these provisions bear upon the required actuarial analyses;

(10) That he and, under his supervision, other employees of The Wyatt Company have prepared the

required actuarial analyses of the Retirement System;

(11) That as a trained, skilled and experienced actuary, he is knowledgeable with respect to the fundamental distinction between life insurance and annuities;

(12) That both life insurance and annuities involving a pooling and sharing of risks and both are are premised upon actuarial principles involving probabilities of death and survival;

(13) That there is, however, a basic difference in the functions of life insurance and annuities in that these arrangements protect

against opposing risks; technically, life insurance provides a benefit payable in the event of one's death, whereas annuities provide a benefit in the event of one's survival. Life Insurance may provide financial security for one's dependents in the event of death, whereas annuities may provide income for life regardless of how long one survives;

(14) That this fundamental difference between life insurance and annuities is generally recognized and is in fact reflected by separate provisions in the Internal Revenue Code, with Section 72 governing annuities and Section 101

governing life insurance in the determination of taxable income;

(15) That life insurance requires the pooling of risks so that the costs to pay a benefit to beneficiaries of a member of a group in the event of the member's premature death are shared by the surviving members of that group;

(16) That annuities, by contrast with life insurance, constitute a pooling arrangement so that the costs to pay a benefit to a member of a group in the event of the member's survival to an unanticipated age are shared by the members

of the group including the deceased members of that group;

(17) That the Retirement System separately provides both annuities and life insurance benefits, the costs for each being separately determined;

(18) That annuities for the protection of the employee upon retirement or disability are provided by the Retirement System pursuant to Ill.Rev.Stat. Ch.108½, §15-135 through §15-139 (retirement) and §15-150 through §15-153 (disability);

(19) That employee retirement and disability retirement allowance

annuities are funded in part by employee contributions through payroll deductions in an aggregate amount of 7% pursuant to Ill.Rev.Stat. Ch.108½, §15-157(1) and (6);

(20) That life insurance is separately provided for the protection of an employee's family by the <u>survivors insurance benefit</u> pursuant to Ill.Rev.Stat. Ch.108½, §15-145 through §15-148;

(21) That the <u>survivors insurance benfit</u> for the employee's family is funded in part by a separate employee contribution through a payroll deduction of 1% pursuant to Ill.Rev.Stat. Ch.108½, §15-158;

(22) That the balance of the funding for both employee annuities and the <u>survivors life insurance</u> is provided by the State of Illinois pursuant to Ill.Rev.Stat. Ch.108½, §15-155;

(23) That the <u>survivors insurance benefit</u>, as contrasted with the employee's retirement annuity, is clearly in the nature of life insurance in its principal function to pay a benefit in the event of the employee's death so as to afford financial security for the employee's dependents.

(24) That to provide actuarial determinations for the <u>survivors</u>

insurance benefit it is not necessary that the Retirement System segregate specific assets as separate properties of the insurance fund - separate fund accounting for the survivors insurance benefit as reported in the audited financial statements is sufficient;

(25) That under fund accounting procedures, the normal cost of the survivors insurance benefit is fully funded, as indicated in the audited financial reports of the Retirement System;

(26) That the basic nature of the survivors insurance benefit as life insurance is not altered by

the fact that in certain circumstances the benefit payable is nil because there is no surviving beneficiary - this merely reduces the actuarial risk imposed on the life insurance fund;

(27) That the fact that the <u>survivors insurance benefit</u> is payable to a beneficiary in the form of an annuity does not affect the character of the benefit as life insurance - it merely constitutes a method of settlement whcih is common in commercial life insurance contracts; and finally,

(28) That an evaluation of all aspects of the <u>survivors insurance benefit</u> support the conclusion that

this benefit under the Retirement System is <u>life insurance</u> the purpose of which is to protect the family of the employee against his premature death.

s/ Robert L. Barnes
ROBERT L. BARNES

Sworn to before me this
11th day of April, 1983.

Notary Public, State of
Illinois, My Commission
expires Jan 31 1986
Issued thru Illinois

NO. ___________

IN THE
UNITED STATES SUPREME COURT

FLORENCE Y. BARNES, Petitioner,	On Writ of Certiorari to the United States Court of Appeals, 7th Circuit
vs.	
UNITED STATES OF AMERICAN, Respondent.	NO. 84-2605

ENTRY OF APPEARANCE

NOW COMES RALPH J. SWANSON and enters his appearance in the above cause on behalf of Petitioner and further states his address and telephone number are as follows:

Ralph J. Swanson
SEBAT SWANSON BANKS GARMAN
& TOWNSLEY
306 Adams Building
Danville, Illinois 61832

Phone: (217) 443-0255

s/ Ralph J. Swanson